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No. 11920

IN THE

# United States Court of Appeals

For The Seventh Circuit

WILLIAM B. F. HALL
AILEEN HALL SHOAFF
ARTHUR F. HALL, JR.
ALVA J. McANDLESS
FRED B. SHOAFF, II
Plaintiffs-Appellants

vs.

THE UNITED STATES
OF AMERICA
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne, Indiana.

Honorable Luther M. Swygert, Judge

## APPENDIX TO PLAINTIFFS' BRIEF

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CLYDE J. COVER,
Attorney for Plaintiffs-Appellants

In The

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

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No. 11920

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| WILLIAM B. F. HALL<br>AILEEN HALL SHOAFF<br>ARTHUR F. HALL, JR.<br>ALVA J. McANDLESS<br>FRED B. SHOAFF, II,<br>Plaintiffs-Appellants<br><br>vs.<br><br>THE UNITED STATES OF AMERICA<br>Defendant-Appellee | Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne, Indiana.<br><br>Honorable<br>Luther M. Swygert,<br>Judge |

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APPENDIX TO PLAINTIFFS' BRIEF

Clyde J. Cover,
Attorney for Plaintiffs-Appellants

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In The

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

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No. 11920

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| WILLIAM B. F. HALL<br>AILEEN HALL SHOAFF<br>ARTHUR F. HALL, JR.<br>ALVA J. McANDLESS<br>FRED B. SHOAFF, II,<br>Plaintiffs-Appellants | ) | Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne, Indiana. |
| vs. | ) | Honorable<br>Luther M. Swygert,<br>Judge |
| THE UNITED STATES OF AMERICA<br>Defendant-Appellee | ) | |

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APPENDIX TO PLAINTIFFS' BRIEF

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JUDGMENT
P. 23 of Record

This case having been submitted upon pleadings, stipulation of facts and issues, depositions, briefs of the parties, and oral argument, and this Court having rendered its opinion constituting finds of fact and conclusions of law;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Defendant have judgment against the Plaintiffs upon the issues in this action, but Plaintiffs because of the adjustment described in paragraphs 15 and 26 of the Stipulation of Fact and Issues of Law is entitled to a judgment of $958.07 plus interest as provided by law; and, that the Plaintiffs pay the costs of these proceedings.

Dated this 27th day of August, 1956.

/s/ Luther M. Swygert
Judge

Approved as to form:

/s/ Clyde J. Cover
Attorney for Plaintiffs

/s/ Phil M. McNagny, Jr.
Attorney for Defendant

OPINION
P. 22 of Record

This case was submitted to the court upon the pleadings, the Stipulation of Facts and Issues of Law, and certain depositions. The first issue so stipulated for the Court's decision is:

"1. Whether the amount paid to Ann O'Rourke Hall under the assignment of March 31, 1932, of the employment and commission contract of July 1, 1905, between Lincoln National Life Insurance Company and the decedent, Arthur F. Hall, constituted taxable income to the decedent for the tax period under consideration in this suit." All the facts giving rise to this issue have been stipulated.

In Hall v. Burnet, 54 F. 2d 443 (Cir. D.C.1931) the court had before it the question of whether Arthur F. Hall as the assignor or his

wife as the assignee was taxable on the amounts paid under assignments of the employment and commission contract involved in the instant case. Those assignments were made in 1921 and 1923 and covered amounts paid under the contract during the years 1921 through 1925. The Court, in holding that the amounts paid under those assignments were not taxable to the assignor as income, said:

> "...that if what was here sought to be conveyed from the husband to the wife was salary, or personal earnings, the same would still be taxable to him though he never actually received it, but in the view we take of this case, what was assigned was neither income nor earnings, but property. It was not an assignment of future earnings but the transfer of a property right, and though this property right gave rise to future income, uncertain and contingent though it might be as to amount, that fact does not destroy the distinction."

In 1932 the assignment now before the Court was made. The Government did not question the inclusion by Mrs. Hall, as part of her gross income in her income tax returns, of the amounts paid to her under this assignment for the years before and including 1940. On November 25, 1940, the case of Helvering v. Eubank, 311 U.S. 122, was decided by the Supreme Court, and apparently on the basis of that decision, the Commissioner asserted that the amount paid as commissions in 1941 and 1942 to Mrs. Hall were taxable to the decedent.

In Helvering v. Eubank, supra, Eubank was a general life insurance agent for the Canada Life Assurance Company. Under the terms of his contract with that company he was entitled to renewal commissions on future premiums collected on policies he had written prior to the termination of his agency in 1924. Thereafter Eubank and another, as a firm, became general life insurance agents for the Aetna Life Assurance Company, and later he individually became a general agent for the Aetna Company. The Aetna contracts contained terms with regard to the payment

of renewal commissions on premiums similar to those in the Canada Life Assurance contract. After the termination of his agency with Canada Life Assurance Company, Eubank assigned his right, title, and interest in the contract to a trustee, and after the termination of the last of the Aetna contracts he assigned all commissions on renewal premiums to become due him under these contracts to the same trustee. The Government assessed the renewal commissions paid by the companies to the trustee under the assignments as taxable income to Eubank, the assignor. The Supreme Court held that the assessment was proper, stating in short opinion that it did so for reasons stated at length in the opinion in the case of Helvering v. Horst, 311 U.S. 119, decided the same day as the Eubank case. There can be no doubt that the assignment of the Canada Life Assurance contract by Eubank presented the identical issue that is presented in the instant case, and in deciding the case the court made no distinction between the assignment of that contract and the assignments of the renewal commissions to become payable under the Aetna contracts.

The plaintiffs contend that the Eubank case is not controlling here. In their brief they say:

> "...in applying the established principle of 'control of the source of the income' to the assignments involved in the Eubank case, the Court found, from the manner in which the case was developed, briefed and argued, that only assignments of income were involved, not the source of the income and the income as well."

Whatever might be said in reference to the way the Eubank case was presented, the factual situation before the Court cannot be ignored. That factual situation and the facts in the instant case are identical. Therefore, the pertinent thing that must be considered is how the issue was decided and not how it was "developed, briefed, and argued."

From a consideration of the Eubank and the Horst cases, I have come to the conclusion that the Supreme Court ruled that there was no material difference between the assignment of the Canada Life Assurance contract and the assignment of the commissions on renewal premiums under the Aetna contracts; and that implicit in that ruling is the holding that at the time of its assignment the Canada Life Assurance contract was merely the legal basis for obligating that company to pay renewal commissions already earned, and was not "property" capable of producing earnings. In other words that which was assigned was not a property right, as held in Hall v. Burnet, but an assignment of income already earned under the terms of the contract, payable in the future. The Eubank case is controlling in my opinion. Accordingly, the finding on this issue must be for the defendant.

The second issue is stated in the stipulation as follows:

"2. Whether the item of $2,400.00 excluded by the executors of the decedent's estate in making the decedent's income tax return for the period preceding the date of his death of November 9, 1942, constituted exempt income in the nature of health insurance as compensation for sickness under Section 22(b)(5) of the Internal Revenue Code of 1939." This section of the Internal Revenue Code provided:

> "(b) Exclusions from Gross Income. -- The following items shall not be included in gross income and shall be exempt from taxation under this chapter:...
>
> "(5) Compensation for injuries or sickness. -- Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness..."

The decedent's executors in making up the decedent's income tax return for the period January 1, 1942, to November 9, 1942, excluded the sum of $2,400.00 from the gross income of the decedent for that period.

They claim this an excludable sickness insurance benefit under the provisions of the above statute and that it is only a portion of the decedent's gross income that could have been claimed as excludable. Hall's annual salary was $50,000.00. Although the plaintiffs contend that the approximate $24,000.00 paid him for the six months' period before his death could have been claimed as sickness benefits, they offer no explanation why the lesser amount was claimed and they now assert no greater claim.

The determination of whether the decedent qualified for the statutory exclusion is necessarily largely a question of fact. The Court of Appeals for the Seventh Circuit, in the case of Epmeier v. United States, 199 F. 2d 508 (Cir. 7, 1952) held that the health and sickness benefits provided by the Lincoln National Life Insurance Company for its employees was an insurance plan within the meaning of Section 22(b)(5) of the Internal Revenue Code of 1939, and the Government has conceded of necessity that the health plan here involved was insurance and that any benefits received thereunder would have been deductible by the decedent's executors.

Under the Lincoln National Life Insurance Company's insurance plan, the decedent would be entitled to his full salary for six months after becoming sick for one week, and to one-half his salary for another six months. The decedent at no time received any check expressly designated as a sickness compensation check. The question thus resolves itself to a determination of whether in fact the decedent was entitled to such compensation, and whether in fact he received such compensation.

To become entitled to compensation for sickness under the Plan, the employee must, of course, first become "sick". Since the decedent, as chairman of the board of directors, was the chief executive officer

and policy maker of the company, the question of when he became "sick" is not as obviously answered as it would be with the ordinary salaried employee who must report to his office daily. The term "sick" must mean something more than mere illness alone and of itself. Used as it is in connection with the concept of compensation for sickness, it infers that the employee must be away from his job and not performing his duties and therefore unable to draw his salary. Sickness compensation is not compensation for the sickness itself, but economic compensation for loss of salary.

For some years before 1942 the decedent suffered from arteriosclerosis. While on a vacation in Florida in February, 1942, he became acutely ill and was in a hospital for more than a week. Before returning to his home in Fort Wayne, Indiana, he visited the John Hopkins Clinic where he was examined. It was determined there that he had a cardiovascular-renal condition. This condition is associated with arteriosclerosis. The immediate cause of his death was uremia. There is no question, therefore, that the decedent was ill with a progressive disease even before May 11, 1942, the date of his last appearance at the Company's offices, and that he was confined to his home after that date. On the other hand, he was not replaced as the chief executive officer of the Company, and there is nothing to indicate that anyone else took over the functions and duties of his office. Rather, the testimony is to the effect that he continued to act as the directing head of the Company from his home. During this period, and until shortly before his death, his secretary worked at his home practically every day. Many of the executives and officers of the Company conferred with him frequently and he continued to be

actively engaged in establishing company policy. While undoubtedly he did not perform all of the various duties that he ordinarily would have performed, he was far from incapacitated, and certainly he was not relegated to being a mere figure-head. The evidence establishes that the decedent was carrying on the duties of his position sufficiently to be entitled to his salary and that his illness had not necessitated his neglect of his official duties. That Hall was no longer able to go to his office and that he was suffering from a fatal and progressive disease are not the determinate facts. The determinate fact is that he was not so disabled as to be prevented from performing to a substantial extent the duties and functions of his office.

The Company's Employees Insurance Plan was administered by the Personnel Department. After it received notice that an employee was ill the department determined whether he was entitled to sickness benefits. The Payroll Department, however, issued the checks for such benefits upon authorization from the Personnel Department. Under the procedure in force during 1942 the Payroll Department was not notified of the determination unless there was a difference between the amount of salary the employee had been drawing and the sickness benefits to which he was entitled. Only when half salary was to start as the measurement of benefits under the plan or when benefits were to terminate altogether would the Payroll Department be notified.

There is no proof of any record of notification of the illness of the decedent being given the Personnel Department or of any determination that he was entitled to sickness benefits. The plaintiffs attempt to explain this absence of proof by arguing that since Hall's serious illness must have been common knowledge among all the departments and since his

sister-in-law was head of the Personnel Department the necessity of giving notice of his illness and disability was substantially fulfilled and that notice to the Payroll Department was never required "inasmuch as Mr. Hall's death occurred before the end of the six-month period, beginning on the 11th day of May when he withdrew to his home on account of illness. Had he lived a few days longer, the Personnel Department, in accordance with the Company's established procedure would have given an order that the amount of his sickness benefit be reduced."

It may be inferred that the head of the Personnel Department as well as all other Company officials knew of the decedent's illness and of his confinement to his home. But this did not relieve the Personnel Department of its duty to determine whether the decedent was entitled to sickness benefits. It was the plaintiff's burden to prove that this action was taken. They have not met that burden. The failure to prove that the established procedure was followed is, in my opinion, dispositive of this issue independently of the determination in this proceeding that the decedent was not entitled to be paid such benefits. Since the amount claimed as excludable under Section 22(b)(5) was in fact received as salary rather than as compensation for sickness through health insurance it does not qualify as an exclusion and must be included in gross income.

This opinion together with the Stipulation of Facts are deemed to be the Court's special findings of fact and conclusions of law.

Counsel for the parties are to present a form of judgment consistent with the Stipulation and this Opinion within fifteen days from date.

Enter:

/s/ Luther M. Swygert
Judge

Hammond, Indiana
August 2, 1956

NOTICE OF APPEAL
P. 24 of Record

Comes now the plaintiff in the above captioned case and gives notice of intention and purpose to appeal to United States Court of Appeals, Seventh Circuit, from the entire judgment and decree of the District Court in said case.

Given in Fort Wayne, Indiana, this 8th day of October, 1956.

/s/ Clyde J. Cover
Attorney for Plaintiff

STIPULATION OF FACTS AND ISSUES OF LAW
P. 16 of Record

TO: The Honorable Luther M. Swygert, Judge

The Plaintiffs and the Defendant, acting through their respective attorneys, agree upon and stipulate the following facts as being clearly established in relation to this case:

1. Plaintiffs, William B. F. Hall, Aileen Hall Shoaff and Arthur Fletcher Hall, Jr., are all the children and heirs of Arthur F. Hall, Deceased, whose death occurred at his residence in Fort Wayne, Indiana, on November 9, 1942. Plaintiff William B. F. Hall resides in Fort Wayne, Indiana, and in addition to representing himself personally in this proceeding, is sole successor trustee under a trust established by the decedent, Arthur F. Hall, in his last will and testament. Plaintiffs Aileen Hall Shoaff and Fred B. Shoaff, II, are residents of Michigan, and Plaintiff Arthur F. Hall, Jr. is a resident of California.

2. Under the decedent's last will and testament, Plaintiffs Alva J. McAndless and Fred B. Shoaff, II, were designated co-executors and testamentary trustees. The estate was completely administered in

the Allen County Probate Court and on July 16, 1945, said parties were discharged as executors and the estate finally closed. Within the period beginning with July 16, 1945 and ending with February 9, 1948, said Alva J. McAndless and Fred B. Shoaff, II, served as testamentary trustees under the decedent's will. As such testamentary trustees they succeeded to all the assets, property and choses in action of the decedent's estate remaining in said estate at the time it was closed. On February 9, 1948 they resigned as such trustees and transferred the trust estate then remaining to Plaintiff William B. F. Hall, who on said date had been duly appointed as successor trustee, which office he continues to hold to this day.

3. Under the facts stipulated in paragraphs 1 and 2 above, it is agreed and stipulated that Alva J. McAndless and Fred B. Shoaff, II, are neither necessary nor proper parties to this proceeding and that their names should be stricken from the pleading and other entries and records of this case.

4. Subsequent to the death of the decedent, Arthur F. Hall, the Defendant, through the office of its Commissioner of Internal Revenue, caused to be audited the decedent's 1941 Federal Income Tax Return and the Federal Income Tax Return for the period January 1, 1942 to November 9, 1942, filed by the decedent's executors. Such audit disclosed alleged deficiencies for such periods of $2,995.40 and $4,833.43, respectively. The Plaintiffs, after contesting such alleged deficiencies before the Internal Revenue Bureau, made payment of the amounts alleged to have been owing the Defendant, namely:

> For the year 1941, $3,995.70, consisting of $2,995.40 tax and $1,000.30 interest computed to October 31, 1947, the date of payment.

For the period January 1, 1942 to November 9, 1942, $6,157.52, consisting of $4,833.43 tax and interest of $1,324.09 computed to October 31, 1947, the date of payment.

5. Subsequent to the payments above described, to-wit, on August 25, 1948 Plaintiffs filed claims for refund on Treasury form 843, requesting the Defendant to refund the amount of such payments as having been illegally assessed and collected. The Defendant, after giving extended consideration to such claims, submitted formal notice of their rejection by a registered letter dated January 23, 1951, such rejection notice, as stated in said letter, being in accordance with Sec. 3772(a)(2) of the Internal Revenue Code.

6. With respect to the decedent's Return for the year 1941, defendant added $4,749.33 of insurance renewal commissions and $362.00 of bad debts to the decedent's gross income. Plaintiffs agree and stipulate that Defendant's position as to the item of bad debts is correct, and accordingly waive any claim for refund on the basis of said item.

7. With respect to decedent's Return for the period January 1, 1942 to November 9, 1942, Defendant in its audit made the following increases in income and decreases in deduction, namely:

(a) An item of renewal commissions in the sum of $3,799.99 was added to Gross Income.

(b) A deduction item of $25.00 relating to an asserted long term capital loss was excluded from Gross Income.

(c) A medical expense deduction item in the amount of $1,250.00 was excluded.

(d) An item of $2,400.00 was added to the decedent's salary, said item having been claimed by the decedent's Executor as an exempt sickness insurance benefit under Sec. 22(b)(5) of the Internal Revenue Code.

8. For the purpose of this suit, Plaintiffs concede the correctness of Defendant's exclusions described in paragraph 7 (b) and (c) above, but contend that the additions described in 7 (a) and (d) were erroneous.

9. The decedent, Arthur F. Hall, became ill in the spring of 1942. He did not return to his office after May 11, 1942.

10. In the year 1923 the decedent became President of The Lincoln National Life Insurance Company, which office he held until February, 1939 when he became Chairman of the aforementioned Company's Board of Directors. The decedent continued as Chairman of said Company's Board of Directors until the date of his death, November 9, 1942.

11. On July 1, 1905 the decedent entered into an employment and commission contract with The Lincoln National Life Insurance Company. A copy of said contract together with a Resolution of the Board of Directors of The Lincoln National Life Insurance Company dated February 9, 1924 is attached hereto and made a part of this stipulation as Exhibit A hereof.

12. On March 31, 1932 the decedent executed an instrument purported to be a gift assignment of said commission contract dated July 1, 1905 to his wife, Ann O'Rourke Hall, and contingently to the Plaintiffs, William B. F. Hall, Aileen Hall Shoaff, and Arthur Fletcher Hall, Jr. A copy of said assignment is attached hereto and made a part of this stipulation as Exhibit B hereof.

13. Ann O'Rourke Hall survived the decedent, but on November 19, 1945 she died, leaving her entire estate to Plaintiffs William B. F. Hall, Aileen Hall Shoaff, and Arthur Fletcher Hall, Jr., except for certain specific bequests having no bearing on the issues in this case. Her estate has been finally distributed and closed.

14. The Defendant in its redetermination of the decedent's Income Tax for the years 1941 and 1942 held that the item of commissions payable under the contract of July 1, 1905, described above, constituted income of the decedent, not of his wife, Ann O'Rourke Hall.

15. For the taxable periods, 1941 and 1942, Ann O'Rourke Hall, deceased, included in her gross income the full amount of renewal commissions paid to her under the assignment of March 31, 1932 described in paragraph 12 above. Subsequent to the audit of the decedent Arthur F. Hall's Returns for said periods, Defendant refunded to Ann O'Rourke Hall the amount of tax resultant from the inclusion of said renewal commission contract in her 1942 Return. No such refund was ever made respecting the year 1941. The Defendant agrees that should the Court in this case reject Plaintiffs' prayer for relief respecting the renewal commissions, they will yet be entitled under Sec. 3801 of the Internal Revenue Code of 1939 to a refund with legal interest of the tax paid in such period by said Ann O'Rourke Hall on account of such renewal commissions, which amount is agreed upon as $958.07.

16. True copies of the Income Tax returns involved in this suit are attached and marked Exhibits C, D, E, F, and G; said being more definitely as follows:

Exhibit C. Return of Arthur F. Hall for 1941.

Exhibit D. Return of Arthur F. Hall for period January 1, 1942 to November 9, 1942, and Return of Arthur F. Hall Estate for period November 10, 1942 to December 31, 1942.

Exhibit E. Return of Ann O'Rourke Hall for 1941.

Exhibit F. Return of Ann O'Rourke Hall for 1942.

Exhibit G. Return of Ann O'Rourke Hall for 1943.

17. The Lincoln National Life Insurance Company had in effect during the year 1942 an "insurance plan" for its employees, a copy of which is contained on certain pages of said Company's Office Manual, dated April 1, 1940, same being attached hereto and made a part of this stipulation as Exhibit H.

18. The decedent's employer, The Lincoln National Life Insurance Company, is organized under the Laws of Indiana, and was authorized and empowered by the Laws of the State of Indiana to issue the type of coverage involved in this proceeding, and was so authorized during the years 1941 and 1942.

19. The decedent received a certificate from the Company under the Employees' Life Insurance Plan, in which he designated beneficiaries of any proceeds payable under said plan, same being attached and made a part of this stipulation as Exhibit I.

20. All acts and procedures prescribed in the Internal Revenue Code of 1939, going to the Plaintiffs' right to institute, prosecute and sustain this suit and to the Court's jurisdiction to adjudicate same on its merits, have been completely fulfilled.

21. All references contained herein or otherwise involved in this suit to Sections of the United States Internal Revenue Code have reference to the Internal Revenue Code of 1939, and amendments thereto.

22. This stipulation shall be binding on the parties as to the facts expressly considered. The parties reserve the right by depositions, interrogatories or through examination of witnesses and records in open Court to develop additional or supplementary evidence on any relevant point or issue.

23. As the sole and only heirs of Arthur F. Hall, as residuary legatees under his will and as residuary legatees under the will of Ann O'Rourke Hall, the Plaintiffs, William B. F. Hall, Aileen Hall Shoaff and Arthur Fletcher Hall, Jr. are equally and severally entitled to any amount determined to be due and owing by Defendant under each and every issue involved in this suit.

24. Should the Court's judgment on the issue involving renewal commissions be in favor of Plaintiffs, the amount of same should be as follows:

Taxable year 1941: $3,720.45 plus interest as provided by law.

Taxable period January 1 to November 9, 1942: $3,206.56 plus interest as provided by law.

With respect to the item above pertaining to the year 1942, a credit in favor of Defendant is to be given on account of the refund made to Ann O'Rourke Hall, to which reference is made in Paragraph 15 of this stipulation. Such credit is in the amount of $829.22, plus interest as provided by law.

25. Should the Court's judgment on the issue involving salary or sickness insurance be in favor of Plaintiffs, the amount of same should be $2,048.50 plus interest as provided by law.

26. Should the Court's judgment on the issue involving commissions be in favor of Defendant, the Plaintiffs will be entitled under Sec. 3801 of the Internal Revenue Code of 1939 to a judgment in the amount of $958.07 plus interest as provided by law.

## Issues

The parties, without presuming to bind the Court, agree and stipulate that the only issues involved for decision in this case are the following:

1. Whether the amount paid to Ann O'Rourke Hall under the assignment of March 31, 1932 of the employment and commission contract of July 1, 1905 between The Lincoln National Life Insurance Company and the decedent, Arthur F. Hall, constituted taxable income to the decedent for the tax periods under consideration in this suit.

2. Whether the item of $2,400.00, excluded by the Executors of the decedent's estate in making the decedent's income tax return for the period preceding the date of his death on November 9, 1942, constituted exempt income in the nature of health insurance as compensation for sickness under Section 22(b)(5) of the Internal Revenue Code of 1929.

Clyde J. Cover
Attorney for Plaintiffs

Phil M. McNagny, Jr.
Attorney for Defendant

EXHIBITS ATTACHED TO STIPULATION OF FACTS AND ISSUES OF LAW

EXHIBIT "A"

Agreement of July 1, 1905

This Agreement entered into this first day of July, 1905, by and between the Lincoln National Life Insurance Company, hereinafter called first party, and Arthur F. Hall, hereinafter called second party, WITNESSETH:

That in consideration of the mutual promises and agreements, hereinafter set forth, it is agreed by and between the parties hereto as follows:

First. Second party hereby enters the employ of first party and during the continuance of said employment and of this contract, shall not without the consent of first party enter the employ of any other person or corporation, with or without compensation, or acquire or retain any interest, legal or equitable, in any insurance company of any description, or in the stock thereof.

Second. Second party agrees to devote his entire time, attention, ability and energy to the promotion of the interest of first party, and to the building up of its insurance business, during the continuance of this contract. Any violation by second party of the provisions of this or the foregoing clause shall operate as a cancellation of this contract at the option of first party, of the exercise of which option, second party shall have thirty days' written notice, provided however that said first party shall exercise such option within three months of the time when it shall have become cognizant of a breach of this or the foregoing clause.

Third. Second party agrees to perform such services in connection with the conduct of the business and acquisition of business for first party as he may be directed to perform by the Board of Directors of first party or the Executive Committee of said Board of Directors.

Fourth. During the continuance in force of this contract second party shall receive from first party as compensation for said services an annual salary of not less than Two Thousand Six Hundred Dollars ($2,600.00) payable monthly, dating from July 1st, 1905, and in addition to said salary, second party, his heirs, administrators, executors or assigns, shall receive a commission on all renewal premiums paid to first party on life insurance written and issued by first party during the continuance in force of this contract of two and one-half per cent on the first $400,000.00, two (2) per cent on the second $400,000.00, one and one-half per cent on the third $400,000.00 and one and one-half per cent on all additional renewal premiums over and above said Twelve Hundred Thousand Dollars, said commissions to be paid each year without reference to any preceding year. But in computing the amount of said renewal premiums, on which commissions are to be paid under this contract, there shall not be included therein any renewal premiums on life insurance taken by first party on the lives of stockholders of first party residing in Allen County, Indiana, nor renewal premiums on life insurance taken by any other life insurance company, beneficiary association or society, which may be taken over by, transferred to, or reinsured by first party.

Fifth. The life of this contract shall be limited to a term of fifteen years from the execution thereof, and shall renew itself annually without action of the parties hereto, from the first day of January, 1907, upon condition that first party shall have on its books in force paid-for life insurance as follows:

| | |
|---|---|
| January 1, 1907 | $1,500,000.00 |
| January 1, 1908 | 2,000,000.00 |
| January 1, 1909 | 2,500,000.00 |
| January 1, 1910 | 3,000,000.00 |
| January 1, 1911 | 4,000,000.00 |
| January 1, 1912 | 5,500,000.00 |
| January 1, 1913 | 7,500,000.00 |
| January 1, 1914 | 10,500,000.00 |
| January 1, 1915 | 14,000,000.00 |
| January 1, 1916 | 19,500,000.00 |
| January 1, 1917 | 25,500,000.00 |
| January 1, 1918 | 32,500,000.00 |
| January 1, 1919 | 40,500,000.00 |
| January 1, 1920 | 49,500,000.00 |
| January 1, 1921 | 59,500,000.00 |

It is agreed between the parties hereto that if the amount of paid-for business on the books of first party shall not equal the amount set out in the foregoing schedule, then this contract shall become null and void upon the date of such failure, at the option of said first party, and second party shall have thirty days' written notice by first party of the exercise of said option, which notice shall be given within sixty days from the date of such failure.

Provided that in case first party shall not employ an assistant to second party acceptable to him on or before one year from the date hereof, then the amount of paid-for business to be on the books of first party in order for this contract to renew itself as above shall be as follows:

| | | |
|---|---|---|
| January 1, 1907 | | $1,000,000.00 |
| January 1, 1908 | 1 | 1,500,000.00 |
| January 1, 1909 | 2 | 2,000,000.00 |
| January 1, 1910 | 3 | 2,500,000.00 |
| January 1, 1911 | 4 | 3,000,000.00 |
| January 1, 1912 | 5 | 4,000,000.00 |
| January 1, 1913 | 6 | 5,333,333.33 |
| January 1, 1914 | 7 | 7,000,000.00 |
| January 1, 1915 | 8 | 9,500,000.00 |
| January 1, 1916 | 9 | 12,500,000.00 |
| January 1, 1917 | 10 | 16,750,000.00 |
| January 1, 1918 | 11 | 22,000,000.00 |
| January 1, 1919 | 12 | 30,000,000.00 |
| January 1, 1920 | 13 | 40,000,000.00 |
| January 1, 1921 | 14 | 53,000,000.00 |

Sixth. First party shall issue to second party a regular managing agents' commission contract up to and until January 1, 1908, but the total compensation under this contract and under said agents' commission contract accruing to second party from first party shall not exceed the sum of Six Thousand Dollars ($6,000.00) from the first day of July, 1905, to January 1, 1907.

Seventh. If at any time second party shall voluntarily and of his own volition cease his employment by first party under this contract, or if he shall voluntarily sever his connection with first party, then second party shall forfeit all his right, title and interest in and to his commission on renewal premiums after seven years from the time he leaves the employment of first party, which would otherwise thereafter become due second party from first party.

Eighth. It is further understood and agreed that second party's commission interest in renewal premiums as set out in this contract shall not attach until said renewal premiums are paid in to first party.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this 23rd day of September, 1905.

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY

Arthur F. Hall, Secretary

S. M. Foster, President.

Resolution, February 9, 1924

WHEREAS, a certain contract was entered into under date of July 1, 1905, between this Company and Arthur F. Hall, under the terms of which this Company employed the said Hall, and the said Hall accepted such employment, for the term of fifteen years from the date thereof, AND,

WHEREAS, it was the intention of the parties in said contract to establish the compensation of said Hall by providing for an annual salary of not less than Twenty-Six Hundred Dollars ($2,600.00) during the said term of fifteen years, and in addition to said salary, by granting to said Hall a commission on all renewal premiums received by the Company on life insurance written and issued during the said term of fifteen years (except premiums received on life insurance specifically excepted in paragraph 4 of said contract), such commission upon renewal premiums to be payable to said HALL so long as such insurance should remain in force and this Company should receive renewal premiums therefor, irrespective of whether such renewal premiums were received prior or subsequent to the end of such fifteen year period, AND,

WHEREAS, the said contract is still in force and effect, and was intended by this Company, and has always been construed by it, as granting to said HALL commissions upon all renewal premiums received from such insurance (written during such period), and this Company has paid, and the said HALL has received, since the expiration of the said fifteen year period, commissions on such renewal premiums, but a question has been raised by the examiners of the Insurance Department of the State of Indiana as to whether under the terms of the said contract as written, the said HALL was entitled to receive, or this Company was bound to pay, any commissions upon such renewal premiums received by the Company subsequent to the end of the said fifteen-year period.

NOW, THEREFORE, BE IT HEREBY RESOLVED that it was the intent and purpose of this Company and the said Hall at the time of the execution of said contract, that this Company should pay, and the said Hall should receive,

a commission upon all renewal premiums received by this Company from insurance written during said fifteen year period (with the exceptions stated in paragraph 4 of said contract), and that such commissions should be payable upon all such renewal premiums received by this Company, irrespective as to whether the same were received before or subsequent to the end of the said fifteen year period, and it is the sense of this Committee that said contract as drawn should be construed as so providing, but that if it is otherwise construed, as contended by said insurance examiners, then the said contract by mutual mistake of the parties thereto, at the time of the execution thereof, fails to represent their true intent and purpose, and should be and is hereby reformed so as to provide specifically that such commissions are and shall continue to be payable to the said HALL so long as this Company shall receive renewal premiums upon any of the insurance written during the said fifteen year period, with the exceptions noted in paragraph 4 of said contract.

BE IT FURTHER RESOLVED that a copy of these Resolutions, properly certified by the Secretary of the Company, shall be attached to and form a part of the said Contract.

(ATTEST) I hereby certify that the attached is a true and complete copy of resolution duly adopted at the meeting of the Executive Committee of The Lincoln National Life Insurance Company of Fort Wayne, Indiana, of which Company I am Secretary, on February 9, 1924.

(Signed) FRANKLIN B. MEAD, Secretary

Dated February 9, 1924

Witness: (Signed) MERT STONER

EXHIBIT "B"

Assignment, March 31, 1932

ASSIGNMENT AND GIFT OF INTEREST IN CONTRACT

Subject to the stipulations and conditions set out below, the undersigned, Arthur F. Hall, of Fort Wayne, Indiana, does hereby give, sell, assign, transfer, and deliver to Ann O'Rourke Hall, his wife, for the period of her lifetime, all his right, title, and interest in and to a certain contract between him and The Lincoln National Life Insurance Company, of Fort Wayne, Indiana, dated July 1, 1905, a copy of which contract is hereto annexed; and he does hereby authorize and empower said Ann O'Rourke Hall to collect and receive all sums of money payable under the terms of said contract and to receipt for same as fully and completely as he himself might have done but for this act.

This gift and assignment is made upon the express condition that should the undersigned predecease said Ann O'Rourke Hall, then and in that event her life interest in said contract shall, upon his death, immediately cease and terminate, and thereupon the full and unqualified title to said contract is hereby given, sold, assigned, and transferred to, and shall become vested in, said Ann O'Rourke Hall and in the children of the undersigned, namely: Arthur Fletcher Hall, Jr., William Fletcher Hall, and Aileen Hall, or to the survivors of them, (or in the event of any one or more of said children having died prior to the undersigned's death, but leaving issue who shall be living at the time of the undersigned's death, then the share to which such deceased child would otherwise have been entitled shall vest in his or her issue by right of representation) share and share alike, as absolute owners thereof, and as such owners they shall have the right to collect and receive all sums of

money payable under the terms of said contract and to receipt for same.

The said Ann O'Rourke Hall shall, and she is hereby vested with complete power and authority to, execute any assignments, orders, or other instruments necessary and appropriate, or required by the said The Lincoln National Life Insurance Company and/or my said children, or any of them, to effectuate the vesting of the title to the said contract in herself and my said children.

In event of the failure of said Ann O'Rourke Hall to perform the duty conferred upon her in the foregoing paragraph, said company may ascertain the facts for itself and make payment of amounts becoming due and owing under said contract in accordance with its determination of the rights of the parties based upon this assignment and the facts known to it, and thereby be as fully and completely protected as regards such payments as though they were made upon the strength of instruments executed by said Ann O'Rourke Hall.

By her acceptance of this gift and assignment, said Ann O'Rourke Hall undertakes and agrees that she will not, prior to the death of the undersigned, in any manner encumber, assign, and/or dispose of her interest in said contract without first obtaining the written consent of the undersigned to such disposition.

This gift and assignment is subject to any collateral assignment of the contract referred to effective prior to this date.

Executed at Fort Wayne, Indiana, this 31st day of March, 1932.

WITNESSES (Signed) Arthur F. Hall

Ann O'Rourke Hall

Elizabeth L. O'Rourke

EXHIBITS "C", "D", "E", "F" AND "G" OMITTED FOR REASON OF IRRELEVANCY

EXHIBIT "H"

Insurance Plan

EMPLOYEES' LIFE INSURANCE PLAN

Those full-time salaried Home and Branch Office employees who are on the regular Home Office payroll, and who, preliminary to or at the time of employment are able to pass a satisfactory medical examination, are considered eligible for free sickness and death benefits. (Schedules follow.) Eligible employees are presented with a certificate entitling them to death benefits under our Employees' Life Insurance Plan.

Applicants for employment who are unable to pass the preliminary medical examination, may in exceptional cases be engaged as temporary employees. This class of employees is not entitled to sickness or death benefits. If at some future time such temporary employees are able to pass our medical examination, they will be transferred to the permanent salary roll. In such instances benefits will be computed from the employee's original date of employment.

Before being granted an Employee's Life Insurance certificate and presupposing a satisfactory medical examination, an employee will be required to name a beneficiary who must be either husband or wife, mother or father, or some other blood relative. Requests to name beneficiaries outside of this class must receive the specific approval of a senior officer of the Company.

An employee's eligibility for benefits, in accordance with the schedules shown, is based upon his or her employment year rather than the calendar year.

It is our general rule that an employee whose disability continues beyond the expiration of his sickness benefit period, will be removed from the payroll, and future sickness benefits will not be paid. The Employee's Life Insurance certificate becomes void at the expiration of this period. The salary used in computing death benefits is the one in effect at the beginning of final illness or at the time of accident resulting in death. In unusual cases and at the discretion of a senior officer of the Company, sickness and death benefits, other than those provided in this plan, may be awarded. The administering of the sickness and death benefit plan rests with the Office Administration Department.

All previous absence on account of sickness, regardless of duration, is considered in determining the amount of sickness benefit compensation to which an employee is entitled. Where a second illness occurs within a period of thirteen weeks from the last previous illness, it is considered (for the purpose of administering this sickness benefit plan) a continuing illness, and the employee will receive compensation on the basis of the allowance effective when the first illness began.

The sickness benefits provided for herein shall not accrue in favor of any employee who becomes entitled to and is paid compensation under any Workmen's Compensation Act for illness or disability due to occupational disease or an accident sustained in the course of employment. The Company, however, will pay to such employee for the applicable period set forth herein the difference between the amount of compensation under the Workmen's Compensation Act and the amount specified herein, whenever the compensation under the Workmen's Compensation Act is less than the amount specified herein.

## SICKNESS BENEFITS

| Period of Service | Compensation Allowed | |
|---|---|---|
| Under 6 months ..... | Full Salary--½ month | |
| 6 months to 1 year..... | Full Salary--½ mo. | .... One-half Salary--2 mos. |
| Second year ..... | Full Salary--1 mo. | .... One-half Salary--4 mos. |
| Third year ..... | Full Salary--2 mos. | .... One-half Salary--5 mos. |
| Fourth year ..... | Full Salary--3 mos. | .... One-half Salary--6 mos. |
| Fifth year ..... | Full Salary--4 mos. | .... One-half Salary--6 mos. |
| Sixth to tenth year .... | Full Salary--5 mos. | .... One-half Salary--6 mos. |
| Tenth and subsequent years ..... | Full Salary--6 mos. | .... One-half Salary--6 mos. |

## DEATH BENEFITS

| Period of Service | Amount of Benefit |
|---|---|
| First year ..... | 25 percent of Yearly Salary |
| Second year ..... | 50 percent of Yearly Salary |
| Third year ..... | 75 percent of Yearly Salary |
| Fourth and subsequent years ..... | 100 percent of Yearly Salary |

In no event will the sum payable as a death benefit exceed $10,000.

An employee leaving the service of the Company for any reason whatsoever, whether of his own volition or otherwise, and returning at a later date, will receive no recognition for past employment in so far as sickness or death benefits are concerned unless a specific exception is made and approved by a senior officer of the Company.

The Company has provided its employees with an unusually liberal plan of sickness benefits. The payment of these benefits presupposes that the employee is carrying out the instructions of the Company doctor or the employee's private physician during the period of recuperation. The Company reserves the right to cancel sickness benefits being paid employees, if there is an indication that the fullest cooperation is not forthcoming from the employee in obtaining competent medical attention and following the advice of the physician.

## MEDICAL FACILITIES

The services of our Company nurse are available for calling upon employees who are confined to their homes on account of illness.

A fully equipped first aid hospital for the use of our employees, and free counsel and advice from our Home Office Medical Directors is also available. It is the Company's desire to aid and maintain a high standard of health among its working force. This is even more important to the individual than to the Company. In order to attain this end, the Company endeavors in every possible way to maintain sanitary working conditions and give every consideration to the health of its employees in so far as the conduct of our work is concerned. It is expected that our employees in return will cooperate with the Company in the attainment of this end.

Any employee suffering from illness or accident during working hours, even though it be a minor one, should report immediately to the nurse for treatment. No charge is made for such service.

Any employee who has been suffering from a contagious disease or who has been exposed to a contagious disease, is requested to furnish a doctor's certificate, stating that he or she has fully recovered or that the exposure to contagion has been removed, before returning to work.

## TESTIMONY PERTAINING TO SO-CALLED COMMISSION PAYMENTS, RELATIVE TO ISSUE 1 OF PLAINTIFFS' BRIEF.

Deposition of Chelsea E. Brown, Assistant Treasurer of The Lincoln National Life Insurance Company.

Direct examination beginning line 25, page 44, ending line 25, page 47.

"Q Mr. Brown, have you records relative to payments of commissions to Mr. Hall under his contract of employment and agency, dated July 1, 1905?

A Yes, I do.

Q Are those records contained in the little red book which you described at the beginning of your testimony?

A They do, beginning in 1915.

Q And that book showed not only the salary received by Mr.Hall but also these commissions?

A That's correct.

Q Bringing your attention to the year 1932, will you examine the book in relation to those entries and indicate to whom commissions were paid under that contract in that year?

A During the year 1932 commissions were paid to A. F. Hall, January thru March, and that beginning in the month of April, those commissions were paid to Ann O'Rourke Hall.

Q And will you state whether those commissions continued to be paid to Ann O'Rourke Hall during her lifetime?

A Yes, they did, every month thereafter, that is after April, 1932 they were paid to Ann O'Rourke Hall thru October of 1945.

Q Are you familiar with the date of Mrs. Hall's death?

A No, I am not. I know it was sometime late in '45, I don't know the exact date.

Q After that date to whom were they payable?

A After that date they were payable to Arthur F. Hall, Jr., William B. F. Hall and Aileen Hall Shoaff.

Q Do you know it to be a fact that the three children named were the children of Arthur F. Hall and the stepchildren of Ann O'Rourke Hall?

A Yes, sir, they were.

Q And were the commissions continuing even to this day in favor of those three people?

A They are.

Q Turning back to the year 1941 and 1942, I would like to present to you photostats of checks which purport to have been issued to Ann O'Rourke Hall, will you please examine these checks and indicate where the originals came from? Were they out of your records and whether they do represent the disbursement medium of the commissions payable to Mrs. Hall?

A Yes, they are photostats of checks that were issued to Ann O'Rourke Hall, payment of the commissions in the year 1932.

Q '32?

A '32, that's right. These are all '32, right from the beginning of the assignment of the contract from April '32, commissions of twelve hundred--

Q Mr. Brown, will you quickly examine photostats of the checks that you have just considered and note the indorsement in each instance?

A Yes.

Q How is the indorsement made?

A 'For Deposit Only to the account of Ann O'Rourke Hall, Special'.

Q Is that a consistent indorsement thru the year 1932?

A Yes, it is.

Q Do you have any checks relating to the year 1941 or 1942?

A No, we do not.

Q What happened to those checks?

A Well, undoubtedly they have been destroyed in our destruction program wherein the checks of less than one thousand dollars are destroyed after ten years in order to make space for new checks coming on."

Cross examination, beginning line 8, page 50, ending line 4, page 53.

"Q Rephrase the question then? How do you carry Mrs. Hall's account in your general ledger?

A In a disbursement account named 'Commissions Paid', this account includes commissions that are paid to Ann O'Rourke Hall or any other person who is entitled to commissions under their respective contracts.

Q When you say 'respective contracts', would that be principally agents of the company?

A That's right.

Q Do you know it to be a fact that there are other assignments in existence similar to the one we have under consideration here? In other words, are you making payments to people other than the actual agents?

A Yes, in a number of cases. An agent has a right to assign his commission interest to his wife, banker, establish some payable into trust funds and such.

Q In other words, these commissions will be paid for an indefinite period of time, until the premiums on the policies have ceased?

A That is not generally true, I don't believe; today our present contracts usually limit the amount of commissions renewalwise to about nine renewals, and in some cases to fifteen years, that would be fourteen renewals.

Q The return to Mr. Hall, in particular, was there any further act that had to be performed by Mr. Hall to insure his receipt of the annual commissions?

A No.

Q Those commissions would have been paid whether he lived or not, whether he would have stayed with the company or not?

A That's right.

Q Do your records indicate any official notification of this assignment by Mr. Hall?

A No, we have no indication; that is these records do not indicate that we had any official communication; the only thing I find is when the heading on the page was changed to name Ann O'Rourke Hall as the payee of these commissions.

Q Were you aware of the fact that Mr. Hall had to continue his employment with this company in order to maintain his right to the renewal commissions?

A No, I have never read the contract.

Q You testified that as far as you knew that Mr. Hall had nothing further to do--well, after 1932--in order to retain the right to these commissions, is that correct? He had no further act to perform that everything had been done which would entitle him to the commissions or his wife to the commissions?

A What do you mean by that? We have continuously made payments.

Q Well, did he have to--let's say--examine those contracts every year, did he have to recontact the insured, for instance?

A No, in so far as I know, he never made any examination of our records to see that premiums collected on those policies were included in the bulk grouping of the premiums collected on which we computed his commissions.

Q So then as far as you knew, there was nothing further for him to do to insure the right to those commissions?

A That's right, the accounting department in accumulating their work tickets or their work procedures accumulated all the premiums received on policies up to a certain number, the numbers progressing seriatim, of course, the last number issued in 1919 or 1920, whenever the fifteen year period expired, and they became the yardstick by the accounting and accumulating premiums broke off their accumulation for the month and reported to us, the Treasurer's Department, and we made the calculation of the amount of the commissions payable for that month."

TESTIMONY ON WHICH PLAINTIFFS RELY IN SUPPORT OF ISSUE 2
PRESENTED IN PLAINTIFF'S BRIEF

TESTIMONY ON THE SUBJECT OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN ARTHUR F. HALL AND THE LINCOLN NATIONAL LIFE INSURANCE COMPANY

Deposition of Chelsea E. Brown, Assistant Treasurer of The Lincoln National Life Insurance Company.

Direct examination, beginning line 16, page 7, ending line 1, page 11.

"Q Mr. Brown, does that book and the entries contained in it treat Mr. Hall as an employee of the Lincoln National Life Insurance Company?

A Yes, it does.

Q And are the disbursements indicated as salary payments?

A Yes, they are.

Q And did that continue throughout the period of the record until the date of Mr. Hall's death in 1942?

A Yes, it does.

Q And the disbursements in relation to certain items, I believe you mentioned the Lincoln Investors, will you explain what the Lincoln Investors is?

A The Lincoln Investors is a corporation which was formed by the employees of the Lincoln National Life Insurance Company back in 1931, whereby the employees could conveniently acquire a holding in their employer corporation, that is stock of the Lincoln National Life Insurance Company, thru a system of monthly payments; * * *.

Q Mr. Brown, I am submitting to you a certificate, which is marked Certificate No. 930, and caption, 'Certificate of Stock - The Lincoln Investors, Inc.', and I will ask you

whether this is a certificate which was issued to Mr. Hall during his lifetime?

A Yes, it was issued to Mr. Hall during the month of April, 1939.

Q And was that certificate surrendered by Mr. Hall in exchange for Lincoln Life stock?

A It was on April 1st of 1942, three years after its issue, it was surrendered by Mr. Hall for his share of the assets of the corporation that were distributed at that time.

Q. Does that certificate indicate that only employees of the Lincoln National Life Insurance Company could possess and receive benefits under the Lincoln Investors?

A May I read from the certificate?

Q Yes.

A Of what the limitation is?

Q Yes.

A In the last whole paragraph, 'The shares evidenced by this certificate are transferable only to active employees, officers, and agents of the Lincoln National Life Insurance Company.'

Q Mr. Brown, in this record that you have described, are there payroll deductions made in relation to Social Security, that is to say for Old Age Benefits and unemployment benefits?

A Yes, there are.

Q Will you please indicate what those deductions were in the years 1941 and '42?

A On January 2, 1941 a total of $30 was withheld for Social Security Tax. On January 13, 1942 Social Security Tax of $30 was withheld.

Q Were like withholdings made in earlier years?

A Yes, there were.

Q Please state, Mr. Brown, whether the record which you have is uniform in its content and treatment of Mr. Hall's compensation situation with respect to the years before and after 1939 - February, 1939?

A Yes, they are, the same form.

Q The same reference?

A The same references, the same descriptions of items of salary, same items of withholdings, to whom payments were made and for what purpose.

* * * * * *

Line 5, page 13, to line 18, page 13.

Q What was Mr. Hall's compensation, let us say, beginning with the year 1930 or thereabout, and continuing until the time of his death?

A Reading from the small red-bound book would indicate that Mr. Hall's salary during 1930 was $50,000 per year, and that same annual salary continued thru all of the years up to his death, except in the year 1933.

Q What was the compensation paid in the year 1933?

A $44,375.

Q Mr. Brown, as an employee of the company during the year '33, do you recall what was the occasion for the reduction in Mr. Hall's compensation?

A During one of the worst years of the depression, we all took salary cuts."

Cross examination, [illegible]

"Q When you were referring to these two small books which contained Mr. Hall's salary and commissions payable from the year 1915 up until 1942, up to the date of his death, who kept those records?

A Those were maintained or posted, for the most part, by our Assistant Treasurer Alma Orrison until she retired along in 1945 or '46, since which date they have, for the most part, been posted by Karl Elliott or U. S. Anderson, employees in the Treasurer's Department.

Q From your experience as an accountant, would you say those records are posted the same as the pay roll records of the average employee, except as to form?

A That's right, they are.

Q In other words, it was just a ledger account of his pay roll record, is what it amounts to?

A Yes.

Q A subsidiary account?

A Yes.

Q This, of course, then is posted into the big book, the control pay roll record?

A The control, merged with all the other pay rolls that come from various sources.

Q Now in your general ledger accounts during the year 1941 and '42 you had an account for salaries and you had an account for commissions paid, correct?

A That's right.

* * * * * *

Line 1, page 54, to line 17, page 54.

Q Mr. Brown, after reviewing the stock record book would you state the number of shares owned by Mr. Hall and/or his wife during the year 1932?

A The total amount owned by both, now these were in their separate names, but the total holdings were 8,204 shares.

Q That's in the Lincoln National Life--

A Lincoln National Life Insurance Company.

Q What was the total number of outstanding shares as of that date?

A 500,000 shares.

Q Will you state the number of shares owned by Mr. Hall and/or his wife in 1942 - during the year 1942?

A Total held in both their names is 3,185.

Q And the total number of outstanding shares during the year 1942?

A Was 500,000 shares."

Deposition of Miss Hilda McDarby, Secretary of Arthur F. Hall.

Direct examination, beginning line 7, page 62, ending line 22, page 64.

"Q Will you state your name, please?

A Hilda McDarby.

Q Will you please state how long you have been an employee with the Lincoln National Life Insurance Company, Miss McDarby?

A Since the first of November, 1934.

Q And were you an employee of the company before you became secretary of Mr. Arthur F. Hall?

A No.

Q [illegible]

of Mr. Arthur F. Hall?

A Yes.

Q And you continued to be his secretary to the date of his death?

A Yes.

Q On November 9, 1942?

A Yes.

Q Will you describe the nature of your work as secretary for Mr. Hall?

A Well, I kept records, kept his records, took his dictation and arranged most of his business and personal affairs, and the ordinary secretarial work, would about cover it, I think.

Q Would it be fair to say that you did work normal to a secretary?

A Normal to a secretary, arranged his appointments.

Q And what have you to say concerning Mr. Hall's general position with relation to the Lincoln National Life Insurance Company?

A Well, I would say he was the President and Chief Executive Officer at the time that I came; and it was my impression that he continued in that capacity until the time that he died.

Q Do you recall when Mr. Hall became Chairman of the Board?

A Yes.

Q At that time did he relinquish his work as President of the company?

A It was not my impression that he did.

Q In general will you please describe your observations concerning Mr. Hall's position with the company before and after his elevation to the position of Chairman of the Board?

A He continued much the same [illegible] Board as he did before that, and he many times mentioned in letters, he said, 'Although I have become Chairman of the Board, I continue as the Company's Chief Executive Officer'; and he received all of his reports and everything from the various departments in the company, it went on much the same - except delegated probably a little more work and would maybe take a little more vacation.

Q In the latter years of his life did you notice an appreciable slowing down in his activities?

A Not too much, except that last period about the time of his birthday in May of 1942, he had been sick a little while before that, but he would come down to the office and be at home; sometimes I take things out to him and he would dictate out there; he went on much the same except maybe slowed down a little bit.

Q Do you remember the date when he ceased to come to the office?

A Remember perfectly, it was on his birthday, the 11th of May, 1942.

Q That was the last day he came to the office?

A That was the last day he came to the office.

* * * * * *

Line 22, page 65, to line 13, page 67.

Q And then speaking of Mr. Hall's position and his expressions of his own position with the company, I would like to submit to you two letters, one dated February 1, 1939, directed to the Stockholders, being message entitled, 'A Personal Word to Our Stockholders', and as to this letter I would like to ask whether you did the typing in respect to that letter?

Q Does that letter contain any statement by Mr. Hall relative to his future position with the Lincoln National Life Insurance Company?

A Well, he said continuously that no matter what his title he has been the managing officer.

Q Would you read that?

A 'In bringing about this change in titles, I am substituting a younger man as the quarterback and I shall be the coach' -- in quotes, by which he meant, I suppose, that he would continue in office.

Q I would like to submit to you also, Miss McDarby, letter dated July 24, 1939, directed to Mr. Charles H. Pidgeon, and ask you to state whether you prepared that letter?

A Yes, I wrote that.

Q And did that letter also contain some statement by Mr. Hall relative to his position with the company, past and future?

A Yes.

Q Will you please read it.

A He said, 'For several years I have played only nine holes of golf, a year ago I was none too well; however, since I have become Chairman of the Board I am in the best health that I have been for several years, with blood pressure back to normal. I have found that my great worry was who would be selected as President of the Lincoln Life in case of my demise, so I didn't wait, I selected him myself, and now I am not worried about the future management policies of the company. My duties haven't

to come.'

* * * * * *

Line 15, page 68, to line 12, page 69.

Q Miss McDarby, did Mr. Hall give up his office when he became Chairman of the Board?

A No.

Q He continued in the same office in which he had held forth for many years as President?

A Yes.

Q And according to your observation, was he consulted by the other officers of the company in about the same fashion that he had been as President of the Company?

A Yes, he was.

Q And as to his faithfulness in coming to the office, would you care to say anything about that over the years and particularly the period before 1939 and in relation to the period after 1939?

A Well, I didn't notice much difference in the period before '39 and immediately after; in the year of '42 he didn't come quite as frequently, I mean he -- there would be days when he would be away.

Q Did you know that Mr. Hall was ill?

A I knew that he was ill from the time of his birthday on.

Q Before that time you were unaware of it?

A Before that I was unaware of it, that he had any serious illness."

Insurance Company.

Direct examination, beginning line 22, page 93, ending line 11, page 95.

"Q From your observation of Mr. Hall before and after 1939, when he became Chairman of the Board, would you say that there was any great departure from his earlier operation and function as President after he became Chairman of the Board?

A No, I don't believe there was any material change in his duties at all from changing from President to Chairman of the Board. Mr. Hall always believed in the maxim of finding someone else who could do the job and who knew the life insurance business; and way back in 1912, I believe, he got Franklin B. Mead in to take the active leadership of the company while he remained more or less in the background as counselor and advisor. I always thought that Mr. Hall was more of the policy maker, certainly he was the promoter of the company but he was more of a counselor and general consultant of the company even during the period when he was the President of the company, so that he took on the role of being Chairman of the Board as quite a natural one, it wasn't anything that was any material change from his previous acting as the President of the company. As a matter of fact, of course, I knew Mr. Mead and knew Mr. McAndless long before I came with the Lincoln National Life Insurance Company, way back in the 1920's, and it wasn't until about 1935 that I knew such a man as Mr. Hall existed, even though I had been well acquainted with Lincoln Life people and it was my impression back in those days that, first, Mr. Mead was running the company, and then later on Mr. McAndless was

running the company until about 1935 when Mr. Kalmbach told me there was a man of the nature of Mr. Hall, who was very much in the saddle at the Lincoln Life.

Q Then, Mr. Menge, would it be your observation that Mr. Hall continued as the chief executive officer of the company down to the time of his death?

A Well, of course, he not only continued practically but he continued in an official way because the by-laws of the company provided that the Chairman of the Board shall be the principal officer."

TESTIMONY EXPLANATORY OF THE NATURE AND WORKINGS OF THE LINCOLN NATIONAL LIFE INSURANCE COMPANY EMPLOYEES' LIFE AND DISABILITY INSURANCE PLAN.

Deposition of Chelsea E. Brown, Assistant Treasurer of The Lincoln National Life Insurance Company.

Direct examination, beginning line 19, page 13, ending line 13, page 14.

"Q Mr. Brown, will you please state whether your department had anything to do with the administration of the company's group insurance and disability plan?

A At the present time, you mean?

Q No, at any time.

A At any time.

Q Let us confine it to the years prior to 1943.

A Very little except to make payments of - or issue the checks to employees; usually we did not know that an employee might be sick until there would come a time when we would be notified that the payments were to be discontinued or reduced.

Q What department handled the administration of the plan?

A In those particular years I believe the Personnel Department was charged with the responsibility of administering the disability plan.

Q And was your department responsive to the direction of the Personnel Department with respect to this demonstration of the plan?

A Yes, we were."

Cross examination, beginning line 10, page 18, ending line 14, page 21.

"Q You have stated you are familiar with the operation of the sickness plan which is in effect in your company?

A Yes.

Q You are familiar with its terms?

A Yes.

Q Have you ever had occasion to be sick during your employment with this company?

A Oh, on occasion for a few days at a time, but not sufficient to draw on the benefits of the plan.

Q Not sufficient to draw on the benefits. Now what period of time do you have to be sick in order to obtain the benefits of this plan?

A One week.

Q You have to be off work one week?

A That's right.

Q During that period of time does the individual receive his pay or salary?

A That's right, regular salary is paid during the first five days.

Q During the first five days receives regular salary, and after that time?

A The insurance benefits are paid.

Q Then the benefits are paid pursuant to the plan?

A That's right.

Q At what period of time are you given advice as to when a person becomes sick and when you commence paying those benefits?

A You mean the company now, we are talking about, when the company knows?

Q Would you take an example of a person who, we will say, on June 1st of 1941 suffers a coronary and is unable to perform his work and he does not return to work for five months. Now could you briefly describe the sequence of events which would occur as far as you know under the plan?

A Usually the employee's own department head would be notified of the occurrence, probably by some member of the family or friend; and the personnel records then are noted that the person is absent by reason of illness, and that after one week disability payments are made regularly on the 15th and last day of the month, coinciding with usual pay periods, until such time as the person returns to work or dies, shall we say.

Q At what point are you notified that instead of receiving salary he is now receiving sickness benefits, at the end of the five day period?

A You mean--

Q When would your department be notified that a man instead of receiving salary was receiving sickness benefits under the plan?

A Talking about then?

Q Excuse me, during the year 1941 - '42.

A When one in the Treasurer's Department, Pay Roll Section, be notified that a person was disabled at all, our only notification would be when benefits or checks were no longer to be drawn to the order of an employee or when the amount that was being paid was to be reduced under the terms of the plan.

Q In other words, if a man had less than two years of service, and at the end of five days you would be notified if he was to be receiving the reduced salary?

A Less than two years of service would he still receive some, I don't recall the exact schedule of compensation under the disability plan.

Q Alter that question to read - less than six months of service.

A Yes, we would be notified by the Personnel Department of the effective date as to when the amount of compensation or payment was to be reduced, or terminated altogether.

Q And during that period of time, you would continue to carry those payments as his salary?

A That's right.

Q Making no separate designation on your books and records as to whether it was salary, disability benefits or sickness benefits, is that correct?

A That's right.

* * * * * *

Line 17, page 22 to line 17, page 25.

Q Did you have an account in your general ledger for sickness benefits?

A No.

Q Disability benefits?

A No, not as it related to our company employees' plan.

Q Death benefits?

A Yes.

Q You had a separate account for death benefits?

A No.

Q Death benefits were carried under the salary account, is that correct?

A Probably, what I ought to do is go back and get a trial balance for those years, I was thinking of over-all claim account.

Q Therefore, your testimony, Mr. Brown, that the benefits paid pursuant to plan for sickness and disability during the years 1941 and '42 were - will carry a continuation of salary on your

books and records, is that correct?

A That's right.

Q Referring once again to the large pay roll record book, and particularly to the page showing the year 1942, I direct your attention to Mr. Hall's salary account, will you state what is shown as the total salary paid to him for the year 1942?

A $45,833.34.

Q And will you state whether there is any indication of salary being paid to him during the month of December, 1942?

A There is none.

Q Would you indicate further whether there is any other notation during the year 1942 on this page regarding Mr. Hall and specifically directing your attention to an item referred to as 'Employees Group Policy Claim' showing a total of $3,000, could you explain to us what that is, please?

A That is a benefit paid to some employee.

Q Some employee, but not Mr. Hall?

A That I don't know, I would have to go back and figure out, check our records on the trial balance tabulation.

Q Then would you further direct your attention at this point to a notation made in November of 1942, says '$3,000' and there is a Note A - A. F. Hall, $3,000.

A There is an indication that was the benefit paid to or because of the death of A. F. Hall.

Q Well, would you explain to me, to the best of your knowledge, what that $3,000 payment represented?

A Represented the maximum benefit payable at that time to any one employee.

Q For what purpose?

A As a death benefit.

Q As a death benefit?

A That's right.

Q $3,000 as a death benefit paid to Mr. Hall--or to his kin?

A To his beneficiary or whoever -- I don't know.

Q May I then ask you, is it your testimony that the $3,000 payment to Mr. Hall in 1942 represented death benefit pursuant to the plan, is that correct?

A That's right.

Q Payable to the estate of the deceased or to the named beneficiary?

A That's right, I don't know to whom it was paid.

Q It is also your further testimony that there is nothing in the year 1942 on these pages which would indicate that anyone was paid a sickness benefit? Now limiting yourself only to these pages before you?

A You are talking about any sickness benefit, aren't you?

Q Any sickness benefit paid during the year 1942?

A Not separately, as such, but disability benefits could be included in any one of these figures.

Q Could be included but they are not set out separately?

A They are not set out separately.

* * * * * *

Line 18, page 34 to line 14, page 38.

Q When did you become aware of Mr. Hall's illness?

A Well, the first I knew that Mr. Hall was not in the office because of illness was along about the latter part of June of 1942.

Q Were you advised officially of his illness?

A No.

Q Personnel Department made no report to you that he had become ill?

A No.

Q The medical service provided by the Lincoln Company provided you with no report of his illness?

A No.

Q Were you ever aware of the fact that Mr. Hall had been sick and unable to perform his duties prior to this illness in '42?

A Not that I recall, not that I know of, I don't recall that Mr. Hall had ever been ill for any great period of time.

Q During the period of time that Mr. Hall was ill, did you have occasion to visit him on a personal basis at home?

A Yes, I did, I don't recall the exact date, but as I say, it was in the latter part of June, as I recall, of that summer that he was home. Mr. Epmeier and myself were invited out to spend or make a personal visit to Mr. Hall; it was during that summer that he, realizing his own physical condition, invited numerous of the officers and employees of the company to come out and spend a few minutes with him. Mr. Epmeier and I went out and spent probably about an hour and half with him out on the lawn at his home.

Q Did you have occasion to visit him in your official capacity with the company?

A During that time?

Q During the period of his confinement?

A No.

Q What was the period of confinement at his home, do you know?

A I don't know the exact dates.

Q You knew that he died in November of 1942?

A Yes.

Q Did you ever see him at the office during the period from June until November of 1942?

A Not that I recall.

Q Was it your understanding that Mr. Hall was receiving official visits from officers and employees of the company during that period?

A Only as officers of the company and discussing problems, internal operations, would make reference to having had conversations with Mr. Hall. I know, for instance, my own immediate supervisor, Mr. Ledden, at that time had made reference to a number of visits that he had in Mr. Hall's home and Mr. Hall discussed this phase or that problem, I think Mr. Ledden at that time was looking after the contract for installing an elevator in Mr. Hall's home.

Q It was your understanding that Mr. Hall was not completely physically incapacitated?

A That's right, he was up and around, he did not dare exert himself though.

Q In other words, the nature of his illness was that he was required to stay at home but was not completely immobilized?

A That's right.

Q Was his mind acute?

A On the afternoon that I visited him it was very sharp and he had a great deal of interest, of course, in the war in the Pacific, which was at that time going on, and discussed his own personal problems in relation with his sons and the war effort very rationally and intelligently.

Q In your observation of Mr. Hall's activities in this company both before and after his illness, could you state whether there was a substantial change in his influence in the company or activities in the management of the company before and after his illness commenced?

A I doubt very much that there would have been any change in his influence in the company; naturally a man who would be physically handicapped because of an illness probably wouldn't be able to take the same active part in the management. As I recall in discussing, as I say, with my own supervisor -- and I know that it occurred with many of the other department heads and the officers of the company that he was still quite actively engaged in establishing policy.

Q This was up unitl the time of his death?

A I would say approximately, I don't know what his physical condition was later on after the summer.

Q Was his death sudden or do you know?

A I don't know his exact condition.

Q As you know, one of the principal problems in this case is determination of whether $2,400 was allegedly paid as sickness benefit during the year 1942; in other words, one of the claims of the plaintiffs in this case is that $2,400 was paid as a

sickness benefit. Do you recall writing a check for that amount, is there a check in existence for that amount?

A I don't know of any such check or benefit."

Direct examination beginning line 15, page 39, ending line 25, page 40.

"Q Mr. Brown, would you briefly describe the departmentalization of our company's operation, as they prevailed, let us say, in the year 1941 and 1942? Not in detail, understand, just so we can get a general idea.

A Taking them in the order of their probable physical location, rather than their relative size or importance in the over-all company operation, start of course first with our Executive Suite, the Claim Department, Investment Department, Underwriting, New Business, Actuarial, Legal, Agency, Mortgage Loan, Treasurer's, Accounting, Personnel, Purchase and Supply, and General - Policyholder Service Department.

Q These departments, as described by you, were self-contained and self-sufficient except for the liaison through the Executive Department, is that true?

A That is right.

Q And there were relationships but each department had its own operation, its own work, is that true?

A That's right.

Q Mr. Brown, I believe you stated in your direct examination a while ago that another department handled directly the benefit plan under question, namely, the group insurance and disability plan, is that correct?

A That's right, the Personnel Department.

Q The Personnel Department, and that department, I believe you stated, made the discovery of the illness or the death, and

you in your department recognized the company's obligation to the payment of whatever amount was due, is that correct?

A That's right.

Q And you acted at the instance of that department, is that correct?

A Of the Personnel Department, the instructions from that department determine the continuance of payments that were due or the reduction in amounts or termination entirely.

* * * * * *

Line 4, page 41, ending line 20, page 43.

Q Mr. Brown, your testimony has indicated that your records of disbursement to Mr. Hall in no instance indicated a disbursement of benefits under sickness benefit plan, is that correct?

A That's right.

Q Would you please explain why, if the company paid a benefit in relation to Mr. Hall, that your records did not so indicate?

A Benefits paid to Mr. Hall or any other employee of the Lincoln National Life Insurance Company, who was entitled to a benefit, were all charged to salaries, salary designation, whether it was in Mr. Hall's case or in the case of any other employee. It was the general practice that there was no indication or a showing that disability benefits or sickness benefits were other than salary or classified as such in our bookkeeping arrangement, more as a matter of convenience to ourself.

Q Was that a normal method of treating entries such as these? Is it normal to fail to differentiate between salary and the sickness benefit?

A At that time it was the normal procedure to consider all such payments as salary and they were so booked.

Q Was the sickness benefits predicated upon salary?

A Yes, they were.

Q Were they in the same amount as salary?

A Yes, or proportionate share, depending upon the period of service.

Q Might be full salary, might be something less than full salary, some portion?

A That's right.

Q Then your department, you say, charged these benefits as salary? In other words, gave them a name of salary?

A That's right.

Q Labeled them as salary?

A Yes.

Q Did that fulfill your accounting purposes?

A Yes.

Q And fulfilled your accounting needs?

A That's right.

Q And in the Annual Statement, however, were they embodied in salaries?

A As I recall they were all included as salaries.

Q And I believe you have testified that your department was not given notice by the Personnel Department of illnesses as they develop but only when it became necessary for you to reflect some change in your accounting procedure, is that right?

A That's right.

Q And it was only in those instances that your records needed adjustment or change, is that correct?

A That's right.

Q Providing that an employee had not reached the maximum for the deducting of Social Security payments, would you deduct from the payments made under the plan the same as you would deduct from his salary?

A Yes.

Q Would you care to explain that?

A That in this year under consideration, the pay roll department had no knowledge, necessarily, that a person was sick, no official knowledge, and therefore, would continue to make payments in the same amount subject to the same deductions and withholding as had been before illness occurred or disability. We had no knowledge of it until Personnel said, 'Cut this in half or stop it altogether'."

Redirect examination, beginning line 24, page 43, ending line 20, page 44

"Q In the answer to the last question, are you attempting to say that you and your department were compelled to do that or you did do that?

A We did do that.

Q And you are not saying that you had to do it under the law or you are not saying that there wouldn't be a refund if you had done it -- if you had made a payment out of sickness benefits?

A No.

Q You simply say that your department would do that because you had no knowledge--

A As a matter of uniformity and practice.

Q You would have no knowledge of the exact fact, is that correct?

A That's right.

Q It might very well be, so far as you are concerned, that individual would have a claim for refund if you had made a payment out of sickness benefits, is that correct?

A That's right.

Q You weren't passing on that in your accounting procedure?

A No."

Deposition of Dorothy Irene Murphy, Personnel employee of The Lincoln National Life Insurance Company.

Direct examination, beginning line 13, page 76, ending line 4, page 79.

"Q Are you familiar with the company's accident and sickness plan, in other words, the disability?

A Yes, I am.

Q And that is the plan that is set forth in the company's employment manual as of earlier dates and in a formal writing at the present time, is that true?

A That's right.

Q And that is the plan that is set forth in the manual beginning on pages 19 to 21, is that correct?

A Right.

Q And would you please state what the function of your department is in relation to that plan, as administered prior to the year 1943?

A Well, illnesses were handled thru our department, anyone who went on continuous illness kept in touch with our department and according to the provisions of the plan we administered and handled it definitely to the time for which they would receive these different benefits, and notified the pay roll department accordingly when these changes were to come about, for instance by that I mean from full salary to half salary and so on.

Q Or discontinuance?

A Yes, or discontinuance.

Q And would the accounting department or any other department have any knowledge of the fact that an employee was home ill, necessarily -- I mean from your department?

A I don't know whether I understand what you mean, would we notify them when they went on disability, is that what you mean?

Q What I mean is, is your department the exclusive department that would have the obligation and responsibility to determine whether a person was ill and how long he continued ill and whether he was entitled to benefits?

A That's right.

Q And would you make out the checks for the benefits?

A The pay roll department did that upon our authorization.

Q And you would direct--

A We would direct them when to discontinue full salary and assume half-salary, or discontinuance, whatever it might happen to be.

Q And the benefits would be forthcoming from the continuation of the paycheck for a longer or shorter period of time, isn't that correct?

A That's right.

Q Miss Murphy, I am presenting to you a list of names which is captioned, 'Home Office Group Policy Certificates in Force', and this list is dated May 1, 1934, will you examine it to determine whether Mr. Arthur F. Hall's name is on that list?

A Yes, it is.

Q Now Miss Murphy, I would like to also present to you another list which is captioned, 'Home Office and Group Policy Certificates in Force', which is dated August 1, 1939, and I would like to have you examine this list and state whether or not Mr. Arthur F. Hall's name is on that list?

A Yes, it is.

Q Miss Murphy, will you state an opinion, as present head of this department, whether these people on these two lists were employees of the Lincoln National Life Insurance Company?

A In my opinion these lists would indicate that Mr. Hall was an employee of the Company and eligible to the certificates issued at that time.

Q And all persons listed were employees?

A Yes, that is correct."

Cross examination, beginning line 15, page 83, ending line 19, page 84.

"Q Now taking this same individual who became sick on July 1st and you are notified on July 2nd, and that person is confined to his bed, we will say, for 30 days, and then returns to work, now during that thirty-day period what steps would you have taken to notify pay roll, or who would you notify, in fact?

A If they were covered for full salary during that time, it wouldn't be necessary for us to notify anybody.

Q No one would be notified?

A Well, the department would know, of course, because they weren't there, but it wasn't necessary for us to set up anything else.

Q But the pay roll department would not be notified?

A At that time I don't believe there was any difference in the way the checks were written.

Q In other words, we assume that the person under the plan is entitled to the full salary during that period, it would not be the practice of your department to notify Pay Roll since the salary would be continued?

A That's right.

Q Now if the person was only entitled to, let's say, under the plan to full salary for half a month and then half-salary for the second one-half of the month, then of course you would notify the pay roll department at the end of, we will say, fifteen days, something like that?

A That's right.

Q And then the necessary action would be taken by the Pay Roll Department, is that correct?

A That's right.

* * * * * *

Line 9, page 85, to line 19, page 85.

Q Now when you notify the pay roll department a particular person or employee has been stricken as not working, and they, for instance should cut his salary to one-half of his normal salary, do you simply send a statement to that effect or do you specify exactly what the benefits are he is entitled to under the plan? Or just exactly what type of communication would you send the Pay Roll?

A It would just be a memorandum telling them as of what date his salary should be changed from full salary to 50% and as of what date it would discontinue if he were not back on that date."

TESTIMONY CONCERNING THE HEALTH OF ARTHUR F. HALL AFTER MAY 11, 1942

Deposition of Miss Hilda McDarby, Secretary of Arthur F. Hall.

Direct examination, beginning line 9, page 64, ending line 21, page 65.

"Q In the latter years of his life did you notice an appreciable slowing down in his activities?

A Not too much, except that last period about the time of his birthday in May of 1942, he had been sick a little while before that, but he would come down to the office and be at home; sometimes I take things out to him and he would dictate out there; he went on much the same except maybe slowed down a little bit.

Q Do you remember the date when he ceased to come to the office?

A Remember perfectly, it was on his birthday, the 11th of May, 1942.

Q That was the last day he came to the office?

A That was the last day he came to the office.

Q And did you continue to serve him as secretary throughout his continuing life?

A That's right.

Q And would you call at his home to perform services for him?

A I went out there practically every day.

Q For how long?

A Well, I would say up until a week or ten days before he died.

Q And what was the nature of your work for him during that period?

A Some of it personal - personal letters. I would take reports to him from the office here, I mean reports from the various

departments and he would give me messages sometimes for people in the office, and all the time during that time I knew that he and Mr. McAndless conferred with him and back and forth between our offices the same as we had always done.

Q And in other words, Mr. Hall to the extent of his energy attempted to carry on, is that right?

A Yes.

Q Some of the conferring was predicated upon business or social things?

A Yes, on business and other things too."

Deposition of George M. Bryce, Secretary of The Lincoln National Life Insurance Company.

Direct examination, beginning line 7, page 96, ending line 15, page 96.

"Q Please state your name.

A George M. Bryce.

Q You are Secretary of the Lincoln National Life Insurance Company?

A That is correct.

Q How long have you been associated with the Lincoln National Life Insurance Company?

A Since June, 1927, approximately twenty-eight and half years.

* * * * * *

Line 15, page 98, to line 23, page 99.

Q Were you well acquainted with Mr. Hall during the period of his presidency and also the period of being Chairman of the Board?

A I think I could say I was fairly well acquainted, I did not have a lot of work which devolved consultation with Mr. Hall, but he was the kind of man that made himself acquainted with most of the officers of the company, even the junior officers.

Would it be your observation that his position with respect to leadership in the company changed with his appointment as Chairman of the Board, or did it continue very much the same as it had before?

A I think he continued quite active and certainly had his finger on the pulse of everything and knew everything that was going on.

Q And during the period of his illness, which began in May of 1942, did you ever visit Mr. Hall in his home while he was ill?

A Yes, I was out there, I think, on just one occasion. But he made it a practice to invite a number of the men of the company out to his home and to discuss something of the company with them and give us some of his ideas about - oh, how he felt about the company and future of the company, and that sort of thing.

Q Did you regard those as business sessions or inspirational sessions for the benefit of the people whom he invited?

A I think I should honestly say they were more of an inspirational session, as far as I was concerned.

Q He was definitely ill when you called on him at his home?

A Yes, he was, the time that was allotted to us was, I think, rather limited. Now I don't know the exact month, I think that was in somewhere along in May or June, but Lee Wilson and I went out there."

Deposition of Dr. Walter E. Thornton, retired Medical Director of The Lincoln National Life Insurance Company.

Direct examination, beginning line 6, page 2, ending line 20, page 3.

"Q Doctor, please state your full name to the court reporter.

A Walter E. Thornton, 601 Oakdale Drive, Fort Wayne, Indiana.

Q Would you mind revealing your age, just for the matter of the record?

A Well, I was born in '78, June the 30th, Bloomington, Ind

Q And you are a retired employee of the Lincoln National Life Insurance Company?

A I am the retired Medical Director of the Lincoln National Life

Q And how long have you been retired?

A Nine years, approximately

Q Now, Doctor, will you state the offices which you held with the Lincoln National Life Insurance Company when you were active with that company?

A I first came with the company in 1921, at that time as Assistant Medical Director to Dr. English; I continued in that capacity until 1923 when I was made Medical Director of the company; Dr. English retired And some few years later I was made a member of the Board, I don't remember just what year that was, Clyde.

Q Was that in the twenties or the thirties?

A I would say about '28 or '29 And then in 1936, I believe it was, '35 or '36 I was made Second Vice President and Medical Director

Q And those are all of the offices that you held in that company?

A That's all

Q Doctor, you are a graduate physician, are you not?

A Graduated from the Medical College of Indiana on March the 15th, 1901.

Q And you practiced medicine prior to--

A Practiced medicine for twelve to thirteen years in Montpelier, Indiana, and in June, 1913 moved to Indianapolis where I practiced medicine and became Assistant Medical Director of the Indiana National Life, two years later was made Medical Director of that company; continued in that capacity until 1921 when I moved to Fort Wayne to accept the position with the Lincoln National Life.

* * * * * *

ne 5, page 5, ending line 25, page 18

Q Well, Doctor, were you well acquainted with Mr. Hall in business relations and also socially?

A I would say I was.

Q And that continued until the time of his death, is that true?

A Yes.

Q Please state in general now the nature of the man that Mr. Hall was? I am interested in the leadership, ability and things of that nature.

A Mr. Hall was, in my opinion, a master salesman, an organizer; he really placed the stock and organized the company, he carried these characteristics on thru life and was the leading spirit in the company and its affairs. He was never dictatorial. I don't recall that he ever came to my office in his life -- I know he didn't - in connection with an applicant for insurance and asked me if we couldn't do better, or take the risk as a great many presidents want to do. He never did that to me in his life, I would have been surprised if he had. He was regarded in the insurance fraternity as a master in selection of men, and when he selected a man he put in that position an

which he was selected for, and he selected him to fill the position, and if he didn't do it satisfactorily he was shortly relieved of his responsibility.

Q Well, Doctor, would you state that he was a leader thru the democratic process of organization ~~or was he~~ a dominant and, let us say, arbitrary person?

A No, I would say he was never dominant or arbitrary, he was just a natural leader. I wouldn't say that he was arbitrary at all.

Q And the work of the company was thru its organized manpower, is that correct?

A That's right.

Q Was he dynamic?

A Yes, I would say so.

Q Was he hard working?

A Yes, I would say he was

Q And in general, apart from the latter years, was he a man of good health?

A Yes, comparatively average good health, I would say.

Q Well, that's sufficient in a general way concerning Mr Hall. Now, Doctor, I would like to have you look at something that perhaps you have seen before but would not remember. Before I do so I would like to show them to Mr McNagny. (Papers shown to Mr McNagny by Mr Cover). Will you please examine these two sheets, Doctor, and describe first generally as to what they are?

A Well, this is, first, a Lincoln National Life Insurance Company blank of Proofs of Death. Claiman't Statements. And it contains the information that Arthur F. Hall born May 18, '72;

and that he was Chairman of the Board of the Lincoln National Life Insurance Company; and he died - place of death was Fort Wayne; died November 9, 1942, Fort Wayne, Indiana; cause of death was uremia. When did deceased first become impaired - March, 1942, is that right?

Q That's what it says. You are just examining the papers now, Doctor.

A Oh, I am examing the paper, excuse me. And that he consulted a physician on March the 24th, few weeks prior to that. On what date did deceased last attend his work - in May, 1942.. February, 1942 to March, 1942 he was sick in Sarasota, Florida and in Baltimore, Maryland. Attending physician at the time of his death was Dr. Maurice R. Lohman and various other physicians in consultation.

Q You don't have to refer to that (indicating), that has no relation. Now who signed that form, Doctor?

A That is signed by A. J. McAndless, President of the Lincoln National Life Insurance Company.

Q He was President at the time?

A Yes.

Q Is this the Lincoln National Life Insurance Company form of Proofs of Death?

A Yes, sir.

Q And while you were with the company was it part of your duties on occasions of, at least, controverted death claims to examine papers of this nature?

A Yes, sir.

Q Now, Doctor, please state what this form is.

A Well, this is on Lincoln National Life Insurance Company form - Statement of the Physician; and he says that Arthur F. Hall, Fort Wayne, Indiana -- when were you first consulted as physician? March 24, 1942. By whom? Mr. Hall. And date of your last visit was November 9, 1942. Date and place of death - Nov. 9, 1942, Fort Wayne, Indiana. Principal cause of death was uremia. How long did the disease or impairment exist? About forty-eight hours. What was the date of onset? About forty-eight hours. What were the contributory causes of death? Cardiovascular-renal disease about eight months. From what other diseases or impairment has deceased suffered? Minor illnesses. And that is signed by Maurice R. Lohman, the undersigned and various other physicians in consultation during the period.

Q Doctor, it is stated here, 'How long in your opinion did this disease or impairment exist? About forty-eight hours.' In your judgment does that apply to the condition of uremia, or does it apply to--

A Well, that forty-eight hours to me would represent the time he was in coma, unconscious or semi-unconscious, if it was just a gradual weakening, and gradual sinking into unconsciousness. His uremia must have existed much longer than that. I don't understand the completion of that blank because uremia is a slow or may be a rapid onset, but in his case was slow.

Q Well, now, Doctor, apart from these records concerning proof of death to the Lincoln National Life Insurance Company, do you have an independent memory of the last eight months of

Mr. Hall's life?

A Yes, very vividly.

Q Do you recall when he became ill first in the year 1942?

A Well, I think it was in February, about February, 1942.

Q What do you remember about that?

A Well, he called me, he had gone to -- we had induced him to go to Florida because we didn't want him to go thru the rigors of winter here, and he went rather reluctantly, he didn't like to leave; I never saw him quite in that spirit before. Anyway, he went down there and he took sick along, I think, in February, and he wrote me a letter, wanted me to go down there, and telegraphed me, finally called me Saturday morning on long distance telephone, said he was in a hospital and wanted me to come down, and I left immediately - noon, I got down there, I found him in the hospital, Sarasota Hospital, he was very sick, he apparently had had some kind of an upset, which I think of now as probably representing a gastrointestinal upset, in connection, possibly, with this uremia; as they frequently have gastrointestinal upsets with uremia; his bowels were terrible, dysentery, they flushed him out and everything. He was feeling very wretched when I got there, and I was considerably concerned about him that far away among strangers.

Q How long did you stay there with him?

A Well, I stayed there about a week, not quite a week; I didn't stay quite as long as I aimed to stay because he and I got into a little mixup. Mr. Hall has a very strong character of himself, when he wanted to do anything he does it, and he is a good salesman, as I said before; and peculiar thing about it was the day--

I remember that after I got there, the papers was full of Mr. Roosevelt, President, was going to make a speech preparing the people for war with Japan, and Mr. Hall wanted to hear Mr. Roosevelt. And Mr. Hall was an ardent Republican, and I never once knew of Him wanting to hear Mr. Roosevelt, but he did, and he began screaming right away he would get home - and we set up a radio and we get that speech -- and I began to fight it because I didn't figure he was in any shape to go home; and I went downstairs and saw his doctor, and I explained what Mr. Hall had in his mind, and he said, 'Oh, don't worry about that, Doctor, he won't get out of here', and I said, 'Well, now not so fast, Doctor, you don't know Mr. Hall as well as I do, he is quite a salesman and he is liable to convince you he should go home'. 'No', he said, 'he never could do that'. Well, I said, 'Remember, back in my country nobody gets out of a hospital unless the physician that sent him there signs for him to leave, and you are the doctor that has got to sign it, I will never sign it' 'And you sent him here', and he said, 'I will never sign it'. And that was about three or four o'clock in the evening. The next morning I went down to the hospital early because I was concerned about that, I wasn't sold at all that he wouldn't go out; and I got down there about half-past eight and I met the doctor right in the hall coming in, and he said, 'You know, I have been up to see Mr. Hall, I don't think it is too bad for him to go home'. And I said, 'Well, he is going without my consent or approval, and I am going up and tell him so'. And I went up and told him in no

uncertain language that I didn't think that he should go out. 'They will bring down a radio, put it in his room, his wife and family there and we would hear him there'. No, that wouldn't do, we would all go out to the house, we would have a nice time out there. And I said, 'Not with my consent'. And I went back and told his wife that I didn't think he should leave the hospital and she tore down there, excited, and give him fits, and that made him madder at me than ever because I told his wife, and he was pretty much peeved at me; and to show his determination, he got the nurse and the cab and he came out that night and he sat there and listened to the speech. And after the thing was over the nurse and he departed back for the hospital, had some kind of a thing, I don't know what it was, but he was back in the hospital; and I only stayed a couple days after that, kind of peeved me at the time because I said, 'Well, man won't listen to your advice, there is no use to be around', so two or three days later I caught the train and come home.

Q When you mentioned that he went to his home that night, you mean to his Florida home or to where he was staying?

A To his Florida home, Sarasota, he had a house rented for the winter, and I stayed at the house.

Q Well, Doctor, after Sarasota, did he go any place else to a hospital before he came home?

A Yes, he went from there -- he must have stayed there two or three weeks, and maybe longer/-- maybe three weeks, and then he went over to John Hopkins and had a thorough examination there.

Q Do you know what the result of that examination was?

A It was virtually the same as we had, cardiovascular-renal disease. I saw the report and I had it for a long time, but when I retired I sent it back or did something with it.

Q And then after that he came home, is that true?

A He came on home from John Hopkins, that was in March, I believe?

Q Well, I am not sure.

A I can't remember that far back.

Q Then, Doctor, he came home and was he up and around for a period of time after that?

A Not much, no, he went home, he wasn't up and around very much, I can't remember him being active at the office at all.

Q But he did go to the office some, didn't he?

A I don't know, I can't recall that. I would like to say something and clear the record. As far as that little disagreement we had in the hospital, that was all dismissed when we came back, that was just a temporary flare-up of two people.

Q Would you say if he was up and around after he came back it wasn't quite in the normal way, was that true, and then he left on the 11th of May, which is his birthday, not to return again to his office; is that your recollection?

A That is my recollection. And that was the conversation around there, that that was the last time he was ever in the office; and as he left the office that day I was telling the boys before you came in, that he had a dizzy spell and fell in front of my office and I helped him down to his automobile. Now that dizziness, in my opinion, was due to arteriosclerosis, hardening of the blood vessels in the brain, which didn't get proper nourishment, which they frequently have in an arteriosclerosis -

cardiovascular-renal disease.

Q Now you have told us about Mr. Hall's condition before May 11, 1942, would you state in general what his situation was after that date and preceding November 9th when he died?

A Well, he was just slowly progressively going worse, he just lost strength, cardiac reserve was poor, he was short of breath, and of course he had a palor, they all have, and lack of strength; and, in fact, he had lost hope of ever getting well then, and his symptoms were just a progressive affair.

Q Did you frequently visit him in his home?

A Oh, yes.

Q You say that he had resigned himself to--

A Yes, the greatest satisfaction that he seemed to get out of life at that time was from his minister, and he talked to me time and again what a great benefit he had been to him.

Q Was that Father Wheatly?

A Yes, sir.

Q And do you recall what activities he engaged in while he was in his home sick?

A I didn't think he even engaged in any.

Q Did he have visitors?

A Oh, yes, he had visitors; everybody has visitors and he invited some of the younger - second strength of officers, younger men in the company, to come out and see him, two and three at a time, maybe more, he talked to them, he was interested in their progress and their success and their development and, of course, he wanted them to love the Lincoln Life, and that was the

nature that I heard of the conversation; and that was the greatest activity I knew that he had during that summer.

Q Did he converse with Mr. McAndless and other officers of the company on business matters, would you say?

A Oh, yes, Mr. McAndless and Mr. Kalmbach, both, were out there several times that I was there. We would go out together.

Q Would a man with his physical condition be lucid and able to give - pass judgment on various things at different times?

A I would think so. There might have been times that he wasn't, but as there were times that he would be, majority of times he would be.

Q Was he strong enough and able enough to carry on a regime of work such as he normally would do at his office?

A Oh, no, he would not be able to do any continuous work, didn't have the strength, didn't have the cardiac reserve.

Q The doctors who attended him, would you be able to recall how many there were in your memory?

A Well, Dr. Ferguson was first on the case, A. N. Ferguson, Dr. Stier was there just a short time.

Q Dr. Stier?

A Yes, maybe two or three examinations of his heart or something like that, he is a heart specialist, you know; and then actually Dr. Lohman had been the family physician and Mrs. Hall's physician, and he was in latter months on the case.

Q Did he have any consultation with physicians outside the City of Fort Wayne?

A John Hopkins.

Q Well, I mean during that period?

A Not to my knowledge.

Q Was the use of a specialist from outside the city ever suggested?

A By him?

Q By him.

A Yes, he wanted me to call Dr. Moore once.

Q Dr. Moore?

A Yes, he is a heart specialist in Indianapolis, Bob Moore - Robert Moore.

Q And was he called?

A No, I wouldn't do it. That started another little ruckus because Dr. Lohman was up in the lakes on his summer vacation and he called me out there to the house and he thought he ought to have a heart specialist, and he asked me about Dr. Moore, and I said, 'Well, I think Dr. Moore is an outstanding authority, if I had a bad heart and wanted an opinion, I would like to have Dr. Moore's opinion, but I don't think, Mr. Hall, I am the gentleman to call him, because I am only here in consultation myself, Dr. Lohman is the attending physician, and I think Dr. Lohman should be consulted whether or not he needs any more consultants or not, and if he does, I think Dr. Lohman should call him'. And he said something, 'You are getting very ethical', and I said, 'Yes, sir, I expect to always be ethical, as long as I remain in the practice of medicine'. He was not called to my office.'

Q So the doctor wasn't called?

A No.

Q Doctor, did Mr. Hall have attending nurses while he was in his home?

A Yes, he had nurses there, I think, all the time and, oh, say five or six months before he died, I think it was, we put in an elevator because it fatigued him so walking up and down the stairs. We put it in a serve-yourself elevator, get in and take one person up, and that was put in his house by some contractor here in town.

Q Do you remember the names of the nurses or the number of them?

A No, I do not.

Q But you do remember that there were nurses in attendance?

A Oh, yes."

Cross examination beginning line 25, page 20, ending line 17, page 21.

"Q In your conversation with Mr. Hall, when you talked to him did you have a feeling that his mind was weak or was he still sharp?

A Well, I had the feeling that his mind was still sharp.

Q Isn't it true, Dr. Thornton, that you had conversations when you go out to see Mr. Hall, you talked to him and conversed with him?

A Oh, yes, surely.

Q And you would converse about the company?

A Well, some, yes, he would always ask how things are going or something like that.

Q Would you converse about his condition?

A Oh, yes, about his condition and how he felt, and what his symptoms had been, and how he had gotten along, on what he eat and what agreed with him, and things like that; and as I tell you, the last three or four months from June on it seemed most conversation would be about his spiritual advisor."

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ine 3, page 24 to line 7, page 25.

Q Now isn't it true that he would be up and around the house even though he was home?

A Yes, sometimes I would find him out in the yard, sitting out in the yard, sometimes in the house and sometimes in bed.

Q And so when you said that he was not able to carry on activities, you had in mind physical activities?

A Yes, that's right.

Q I also understood you to say on direct examination that Mr. Hall was lucid.

A What is that?

Q I also understood you to say that Mr. Hall was lucid, he could give judgments and make decisions?

A I would say so, yes. Of course, understand in that period of time there would be some times that I would doubt some of the things, but then, generally speaking, I would say he could do that.

Q Now after he returned from John Hopkins, returned home, was he at the office every day or do you recall?

A No, I don't think he was.

Q He was just on and off up until May 11th?

A And more off than on.

Q More off than on?

A Yes, I don't think he was there very much to tell you the truth.

Q And so actually, would you say this is a fair statement of what you testified to: That Mr. Hall became ill in February and that from that time on he was not really at the office enough to be considered as working there?

A I would say so, yes sir."

Direct examination, beginning line 11, page 25, ending line 2, page 27.

"Q Doctor, you have used two medical descriptions, which I wish you would elaborate upon. One is 'arteriosclerosis'.

"A Arteriosclerosis, hardening of the arteries.

Q The other is the 'cardiovascular-renal condition', what is the relation of those two situations?

A They all go together, cardiovascular-renal disease means diseases of the heart, blood vessels and the kidneys; and they are associated with a generalized arteriosclerosis, hardening of the arteries.

Q Which comes first, the arteriosclerosis, and the other follows?

A The arteriosclerosis comes first and it gradually develops until the kidneys become involved, the blood vessels in the kidneys, and the blood vessels themselves harden.

Q Then, Doctor, as I understand your statement, the arteriosclerosis indicates a condition of the circulatory system?

A That's right.

Q And from that flows these resulting conditions of the heart and the blood vessels and the kidneys?

A That's right.

Q And then one further element in this picture, uremia. Is uremia the end result?

A Uremia is a condition that results in a toxic condition from a failure of the development or process of nephritis which develops in the kidneys, and that is caused because the kidneys don't function properly in eliminating the poisons of the body.

and these poisons of the body are stored up in the blood, and that's what produces the convulsions and the coma or what other symptoms you get. Do you get that picture as I explained it to you?

Q Then uremia, as reported as the cause of death, was the immediate cause of death.

A Was the immediate cause of death.

Q And the others were the basic condition which brought it about?

A And the basic condition, yes. You say 'the others', and I want to say the cardiovascular-renal disease was the contributory cause.

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Line 12, page 31 to Line 5, page 33.

Q Just one more clarifying question, Doctor, address yourself to this point: As a medical man and quite apart from the case of Mr. Hall, will you please state the clinical picture of a person afflicted with the conditions that Mr. Hall was afflicted with?

A You mean cardiovascular-renal disease?

Q Yes.

A Well, it's a peculiar process, let's say it is just like you put a wheel, a spinning wheel, and the fellow that has it is on that wheel, and the doctor goes in and examines him on there and he may get heart symptoms this time and examines him the next time and may get blood pressure and next time he may get albumin in the urine and shows an involvement of all the organ; and it is known in medicine as on-the-wheel-disease condition, and it is slowly progressive, when it starts it is difficult for any physician to diagnose, can only surmise. Now some of

these things develop more rapidly than others, like the kidney condition, the coma--that develops rather rapidly, sometimes slowly; gastrointestinal symptoms come up, intense vomiting comes up, I remember seeing one patient die--young person too--of cardiovascular-renal disease, die in vomiting, just vomited from exhaustion, but it was due to the disturbance in there, the hardening of that artery in there. Now is there anything else?

Q. Is it known as a progressive constitutional disease?

A Yes.

Q For which there is no cure when it is actually presented?

A I don't think there is any cure, it is prolongation, alleviate symptoms, diet, moderation in your exercise -- strenuous life. Like Ike is doing, taking it easy, all those things are helpful

Q In the case of an aged person, the progress is not so good?

A It is bad.

Q You were present at the time of Mr. Hall's death?

A Yes, sir.

Q And from early morning until he died at ten o'clock or thereabouts?

A Approximately, as near as I can remember, about that time.

Q And that was the critical or should you say the culminating aspect of that disease?

A Yes, he was in profound coma then.

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Line 3, page 34 to line 10, page 34

Q Doctor, was Mr. Hall sick when he took to his home on May 11th?

A Yes, he was sick.

Q Did he continue to be sick throughout the period until his death?

A Yes, sure, he did.

Q Was he even sick before he left the office?

A Yes, he was sick before he left the office."

Cross examination, beginning line 14, page 34, ending line 19, page 34.

"Q Actually, Doctor, he had been sick for quite a while before May 11th, had he not?

A Yes, sir, but how sick or when it started I can't tell you that, gentlemen; as I told you before, I don't think a physician can tell when those things start, but he was sick before that, and he was concerned about himself."